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NUTRIEN AG SOLUTIONS, INC.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

LISA BAKER;

Plaintiff,

vs.

NUTRIEN AG SOLUTIONS, INC.,
and DOES 1 through 20, inclusive,

Defendants.

CASE NO. 1:21-at-00955

[Formerly Merced County Superior Court,
Case No. 21CV-02844]

**DEFENDANT NUTRIEN AG SOLUTIONS,
INC'S NOTICE OF REMOVAL OF STATE
ACTION UNDER 28 U.S.C. §§ 1332 AND
1441 [DIVERSITY JURISDICTION]**

DEMAND FOR JURY TRIAL

Complaint Filed: August 24, 2021

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant NUTRIEN AG SOLUTIONS, INC. (“Nutrien”) hereby removes to this Court the state action described below:

1. Nutrien is a defendant in the civil action commenced on August 24, 2021, by Plaintiff Lisa Baker (“Plaintiff”) in the Superior Court of the State of California, County of Merced, Case No. 21CV-02844, entitled *Lisa Baker v. Nutrien Ag Solutions, Inc., and DOES 1 to 20, inclusive*.

2. Plaintiff filed the Original Summons and Complaint on August 24, 2021. Service was perfected on September 7, 2021. A true and correct copy of the Original Summons and Complaint is attached hereto as **Exhibit A1**.¹

3. This notice of removal was filed within 30 days after receipt by Nutrien of the pleading setting forth the claim for relief against Nutrien. Furthermore, this case has been removed within one year of the commencement of this action pursuant to 28 U.S.C. Section 1446(c)(1). Nutrien’s removal is thus timely.

JURISDICTION

A. Removal Jurisdiction Based On Diversity Jurisdiction

4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one that may be removed to this Court by Nutrien pursuant to the provision of 28 U.S.C. § 1441(a), because it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs and is between citizens of different states.

5. Pursuant to 28 U.S.C. § 1446(d), Nutrien will also file a copy of this Notice of Removal with the Merced County Superior Court and provide notice to Plaintiff.

6. Pursuant to 28 U.S.C. § 1446(a), copies of all pleadings, process, and orders served on Nutrien in this action will be filed concurrently with this Notice of Removal.

B. Complete Diversity Of Citizenship Exists

7. At the time of commencement of this action, and at all times since, Nutrien has been, and still is, a corporation of the state of Delaware and Colorado, being incorporated under the laws

¹ Pursuant to 28 USC 1448(a), a true and correct copy of all process, pleadings and orders served in this case are submitted concurrently herewith.

1 of Delaware, and has had, and continues to have, its principal place of business in Colorado.

2 8. At the time of commencement of this action, and at all times since, Plaintiff has been
3 and continues to be a citizen of the State of California. (Complaint, Exhibit A1 at ¶ 1.)

4 9. At the time of the commencement of this action and at all times since, Nutrien was
5 not incorporated under the laws of the State of California, and does not maintain its principal place
6 of business in California. Therefore, Nutrien is not a citizen of California.

7 10. Complete diversity of citizenship exists because Plaintiff is a citizen of the State of
8 California and Nutrien is a citizen of the State of Delaware and Colorado.

9 **C. Minimum Amount In Controversy Exceeds \$75,000.00**

10 **(1) Complaint**

11 11. This is negligence claim related to crop damage allegedly suffered by Plaintiff. The
12 fact that the amount in controversy exceeds the minimum requirement for diversity jurisdiction can
13 be determined by the nature of the claims and the type of damages sought in the complaint. (28 U.S.C.
14 §§ 1446(b)-(c).) Plaintiff alleges that a sixty-acre crop of alfalfa was destroyed due to Defendant's
15 negligence. (Exhibit A1, Complaint at ¶ 11.)

16 12. Moreover, Plaintiff specifically quantified her alleged damages in a pre-litigation
17 demand letter to Nutrien.

18 13. A settlement letter can constitute sufficient evidence to satisfy the amount in
19 controversy requirement where the settlement request demands an amount over the jurisdictional
20 minimum. (*Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *Ackerberg v. Citicorp USA,*
21 *Inc.*, 887 F. Supp. 2d 934, 939 (N.D. Cal. 2012).) Moreover, Federal Rule of Evidence 408 does not
22 prohibit the use of a settlement letter in evaluating the amount in controversy because the settlement
23 letter is offered to establish a plaintiff's assessment of the value of the claim. The settlement letter is
24 not offered to establish the amount of a defendant's liability. (*Cohn, supra*, 281 F.3d at 840, fn 4.)

25 14. In a letter dated April 30, 2021, Plaintiff demanded \$183,750.00 representing damages
26 to her crops and an additional \$53,802.00 to replace her damaged crops as the full and final settlement
27 of this claim prior to the initiation of litigation. A true and correct copy of the April 30, 2021, letter
28 is attached hereto as **Exhibit B** and is incorporated as part of this notice. While Nutrien disputes

1 Plaintiffs' claims and damages prayer, it is evident from the allegations that the minimum amount in
2 controversy required for diversity jurisdiction has been satisfied.

3 **(2) Attorney's Fees**

4 15. In addition, the Complaint asserts a claim for attorney's fees and costs. (Complaint,
5 Exhibit A at Prayer for Relief). Attorney's fees damages are also sufficient to invoke the jurisdictional
6 minimum. (*Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).)

7 16. Accordingly, when the attorney's fees are considered together with Plaintiff's claim
8 for general damages, the amount in controversy for the instant matter far exceeds the \$75,000.00
9 threshold based upon Plaintiff's allegations. (28 U.S.C. § 1441(a).) Nutrien reserves its right to
10 dispute any such claims relative to the existence, amount, and appropriateness of Plaintiff's claim for
11 attorney's fees as a damage element. Even without the demand for attorney's fees, the jurisdictional
12 minimum is satisfied.

13 **STATE COURT PLEADINGS ATTACHED**

14 17. Pursuant to 28 U.S.C. § 1446(a), Nutrien has attached to this Notice all pleadings
15 previously filed in the underlying state court action, attached as **Exhibits A1 through A3**:

- 16 • **Exhibit A1** – Complaint, Summons, Civil Case Cover Sheet
17 • **Exhibit A2** – Notice of Case Management Conference and Notice of Inclusion in
18 Delay Reduction Program
19 • **Exhibit A3** – Plaintiff's Proof of Service of Summons

20 **INTRADISTRICT VENUE**

21 18. Pursuant to E.D. Cal. L.R. 120(d), the appropriate venue assignment for this action is
22 in the United States District Court for the Eastern District of California located in Fresno given that
23 the civil action was removed from the Superior Court for the State of California, County of Merced.

24 Dated: October 6, 2021

DKM LAW GROUP, LLP

25
26 By: /s/ Joshua N. Kastan

27 JOSHUA N. KASTAN
28 Attorneys for Defendant
NUTRIEN AG SOLUTIONS, INC.

DEMAND FOR JURY TRIAL

Defendant NUTRIEN AG SOLUTIONS, INC., hereby demands a trial by jury.

Dated: October 6, 2021

DKM LAW GROUP, LLP

By: /s/ Joshua N. Kastan

JOSHUA N. KASTAN
Attorneys for Defendant
NUTRIEN AG SOLUTIONS, INC.